

§ 10.13

timely request for a hearing as provided in these regulations, the decision resulting from the hearing or any applicable administrative appeal from it constitutes the final administrative decision.

(m) *How you pay the penalty.* (1) If you are assessed a civil penalty, you have 45 calendar days from the date of issuance of the final administrative decision to make full payment of the penalty assessed to the Secretary, unless you have filed a timely request for appeal with a court of competent jurisdiction.

(2) If you fail to pay the penalty, the Secretary may request the Attorney General of the United States to collect the penalty by instituting a civil action in the U.S. District Court for the district in which your museum is located. In these actions, the validity and amount of the penalty is not subject to review by the court.

(3) Assessing a penalty under this section is not a waiver by the Secretary of the right to pursue other available legal or administrative remedies.

[68 FR 16360, Apr. 3, 2003]

§ 10.13 Future applicability. [Reserved]

Subpart D—General

§ 10.14 Lineal descent and cultural affiliation.

(a) *General.* This section identifies procedures for determining lineal descent and cultural affiliation between present-day individuals and Indian tribes or Native Hawaiian organizations and human remains, funerary objects, sacred objects, or objects of cultural patrimony in museum or Federal agency collections or excavated intentionally or discovered inadvertently from Federal lands. They may also be used by Indian tribes and Native Hawaiian organizations with respect to tribal lands.

(b) *Criteria for determining lineal descent.* A lineal descendant is an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the

43 CFR Subtitle A (10–1–03 Edition)

common law system of descent to a known Native American individual whose remains, funerary objects, or sacred objects are being requested under these regulations. This standard requires that the earlier person be identified as an individual whose descendants can be traced.

(c) *Criteria for determining cultural affiliation.* Cultural affiliation means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. All of the following requirements must be met to determine cultural affiliation between a present-day Indian tribe or Native Hawaiian organization and the human remains, funerary objects, sacred objects, or objects of cultural patrimony of an earlier group:

(1) Existence of an identifiable present-day Indian tribe or Native Hawaiian organization with standing under these regulations and the Act; and

(2) Evidence of the existence of an identifiable earlier group. Support for this requirement may include, but is not necessarily limited to evidence sufficient to:

(i) Establish the identity and cultural characteristics of the earlier group,

(ii) Document distinct patterns of material culture manufacture and distribution methods for the earlier group, or

(iii) Establish the existence of the earlier group as a biologically distinct population; and

(3) Evidence of the existence of a shared group identity that can be reasonably traced between the present-day Indian tribe or Native Hawaiian organization and the earlier group. Evidence to support this requirement must establish that a present-day Indian tribe or Native Hawaiian organization has been identified from prehistoric or historic times to the present as descending from the earlier group.

(d) A finding of cultural affiliation should be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to